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Attorney for Glen Silva

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

| | | |
|---------------------------|---|---------------------------------------|
| UNITED STATES OF AMERICA, |) | No. CR-07-00678-JSW |
| |) | |
| Plaintiff, |) | STIPULATION AND PROPOSED |
| |) | ORDER CONTINUING PRETRIAL |
| Vs. |) | AND TRIAL DATES |
| |) | |
| GLEN SILVA, |) | Honorable Jeffrey S. White |
| |) | |
| Defendant. |) | Excludable Time: 18 USC 3161(h)(8)(A) |
| |) | |
| |) | |

Defendant Glen Silva, by and through his attorney, Steven F. Gruel, Esquire, and the United States of America, by and through its attorney, Denise Marie Barton, Assistant United States Attorney, hereby stipulate and respectfully request that the Pretrial and Trial dates be continued as follows: If agreeable to this Court, to move the Pretrial Conference dates respectively, from February 2, 2009 (pretrial) and February 23, 2009 (trial) to February 23, 2009 (pretrial), 2:00 p.m. and March 16, 2009 (trial), or in the alternative, to maintain the trial absent a motion in accordance with the Court's Standing Order (as discussed below) date but continue the date for pretrial conference filings until January 23 or January 22, 2009. The parties respectfully request these brief continuances for the following reasons:

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POSSIBLE PLEA AGREEMENT / ACTIVE NEGOTIATION

1. The parties are, and have been, actively engaging in meaningful negotiations as a means to resolve this case without trial. These discussions are ongoing and involve exploring various possible dispositions of the case. The proposed brief continuance, will allow the parties to focus on resolution in lieu of trial, and may obviate the need for trial altogether.
2. Additional time is requested to explore a voluntary plea resolution it may have some collateral impact on Mr. Silva's immigration status in the United States (Mr. Silva is a lawful permanent resident). To assist in this determination and process, counsel for Mr. Silva has engaged the participation of practicing immigration attorneys in both San Francisco and Washington D.C. who have been to assisting by providing their legal analysis regarding the immigration consequences to Mr. Silva of various "plea agreement scenarios." While the input by these immigration attorneys is extremely valuable for any plea resolution, it does however delay the negotiation process.

LIKELY PRETRIAL CONFERENCE MATTERS

3. The have been working together in accordance with the Court's Standing Order in Criminal cases. To that end, the parties have exchanged their respective Motions *In Limine*. Each party filed one Motion *in Limine*. If so ordered, these can be filed with the Court at this time if the Court wishes to view the anticipated motions should the case not be resolved by way of a plea agreement. By agreement, the parties will be responding to each other's motions *in limine* on Friday, in accordance with the Court's Standing Order.
4. The parties have engaged in discussions regarding likely issues to be addressed at the pretrial conference. The parties do not anticipate many contested exhibits and believe

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1 that the majority of the issues to be resolved by the Court will relate to contested jury
 2 instructions, not trial exhibits and *motions in limine*.

3 **POSSIBLE NEED FOR MOTION PER THE COURT'S STANDING ORDER**

4 5. Defense counsel is required to attend a mandatory settlement conference in another
 5 matter on January 21, 2009 which necessitates a substantial amount of preparation work during
 6 the time that the parties will be completing pretrial conference filings. If this Court is not willing
 7 to continue the trial dates in the manner requested, defense counsel requests that this Court
 8 continue the dates for filing the pretrial conference filings for two / three days to permit defense
 9 counsel to fully prepare for the mandatory settlement conference and thereafter, have time to
 10 complete work on the pretrial conference filings. As referenced above, the parties do not
 11 anticipate significant disputes that will need resolution during the pretrial conference.

12 6. Defense counsel, however, respectfully requests this brief continuance in the trial date to
 13 March 16, 2009 not only because the matter may be resolved by a plea disposition, but
 14 additionally because of a possible inability to effectively prepare this case for trial. In other
 15 words, defense counsel's case requiring the mandatory settlement conference on January 21,
 16 2009, will then proceed to trial if settlement is not achieved. That case does not conflict with the
 17 trial currently scheduled before Your Honor, but should that case proceed to trial it may limit
 18 defense counsel's ability to effectively prepare for trial in this case. Therefore, in accordance
 19 with this Court's Standing Order permitting a motion predicated on good cause up to seven (7)
 20 days before trial, defense counsel may need, should the active plea discussions be futile and
 21 should the other matter proceed to trial, to subsequently file a motion to briefly move, as stated
 22 above, the trial date to March 16, 2009. Defense counsel only mentions these matters to
 23 respectfully inform Your Honor as to defense counsel's possibilities.

24 7. The parties stipulate that there are various excludable grounds under the Speedy Trial Act
 25 which permit this continuance, including but not limited to the effective preparation of counsel.
 26 See 18 USC 3161(h)(8)(A).

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8. Defense counsel hereby represents that he has fully discussed the matters contained in this Stipulation with the defendant and that the defendant fully understands and concurs with the requests detailed herein.

SO STIPULATED:

DATED: 1/15/09

_____/s/_____
STEVEN F. GRUEL
Attorney for Glen Silva

DATED: 1/15/098

_____/s/_____
DENISE MARIE BARTON
Assistant United States Attorney

~~PROPOSED~~ ORDER

PREDICATED on the above stipulation and GOOD CAUSE APPEARING, the pretrial and trial dates of February 2, 2009 and February 23, 2009, respectively, are hereby continued to February 23, 2009 at 2:00 p.m. and to March 16, 2009 at 9:00 a.m.

FURTHER, as stipulated by the parties, the Court finds that the time from February 2, 2009 to March 16, 2009 shall and hereby does constitute excludable time under the Speedy Trial Act in accordance with 18 USC 3161(h)(8)(A).

IT IS SO ORDERED.

January 15, 2009



HONORABLE JEFFREY S. WHITE
United States District Court Judge

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